IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

LA.App..No. 1119 of 2003(D)

APPELLANT: RESPONDENT:-

STATE OF KERALA.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA

RESPONDENTS: CLAIMANTS:-
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1. M.A.MOHAMMED MUSTHAFFA, M.A. HOUSE,
VADIYIL LANE, BIG BAZAR, CALICUT.

2. M.A.MOHAMMED RIYAS, M.A.HOUSE,
VADIYIL LANE, BIG BAZAR, CALICUT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ALONG WITH LAA.No.1150/2003 ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON IA.NO.998/2003 IN LAA.No.1119/2003-D.

DISMISSED.

9-7-2007. **Sd/- Kurian Joseph, Judge.**

Sd/- T.R.Ramachandran Nair, Judge.

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kvs/-

P.A. To Judge.

KURIAN JOSEPH,

&

T.R.RAMACHANDRAN NAIR, JJ.

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LAA.Nos.1119 & 1150 of 2003.

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Dated this the 9th day of July, 2007.

J U D G M E N T

T.R.Ramachandran Nair, J.

These appeals arise from the common judgment in LAR.Nos.196/2000 and 195/2000 of the Subordinate Judge's Court, Kozhikode. These appeals are filed by the State challenging the judgment and decree claiming enhanced compensation at the rate of Rs.2 lakhs per cent and Rs.1,80,000/- per cent.

2. The notification under Sec.4(1) was published on 26-11-1993, award was passed on 31-5-1994 and possession was taken on 28-7-1994. The claimants sought enhanced compensation based on the importance of the locality and potentiality of the land etc. The market value fixed as per the award is at the rate of Rs.4,850.61.

3. In support of the claim PWs.1 and 2 were examined and Ext.A1 series and Ext.C1 report of the commissioner were marked. The documentary evidence namely Ext.A1 is the property tax pass book. Apart from the same no sale deeds or other documents relevant for the purpose of fixing the market value have been produced by the claimants. Therefore, the

court below has fixed the enhanced compensation purely based on the report of the commissioner. In Ext.C1 report the commissioner only stated that local enquiry reveals that the price of land prevalent at the time of acquisition in and around the acquired land was Rs.4 lakhs to Rs.5 lakhs per cent. Accepting the same the court below fixed the market value of the property acquired in LAR.No.195/2000 at Rs.2 lakhs per cent and in LAR.No.196/2000 at Rs.1,80,000/- per cent. We disapprove the method in fixing the market value, purely based on the report of the commissioner. The report of the commissioner shows that he had not referred to any comparable sale deeds or other relevant materials to form the opinion.

4. In a reference under Section 18, the court below has to fix the market value on the basis of the evidence adduced by the parties. The endeavour should be to arrive at a just and fair compensation. The well established method is by comparing land value reflected in similar transactions. The potential value of the land can also be assessed by relevant materials. But herein the claimants have not made any effective attempt by producing sale deeds which would reflect the market value of the land acquired at the time of acquisition. Therefore, the market value now fixed is on the basis of a commission report which, as we have pointed out earlier, is also not based on assessment of any relevant materials. Therefore, the value now fixed by the court below is only on the basis of guess work alone which is

impermissible in law.

5. The judgment and decree are hence set aside and the matter is remanded to the court below for fresh disposal in accordance with law. Both parties are allowed to adduce fresh evidence. No costs.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-